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EXAMINATION UNDER OATH

of

DR. RICHARD G. HARVEY/HARVEY FAMILY
CHIROPRACTIC, PHYSICAL THERAPY &
ACUPUNCTURE PLLC

CARRIER: ALLSTATE INSURANCE COMPANY

SM FILE: 1280.266

CLAIM NUMBERS:

0285867107, Luan Alamo-Martinez

0283979960, Jose Moran

0283979960, Meliza Moran

0288691439, Jeanne M. Poniros

0283365179, Gina Mascia

0290044403, Nancy Martinez

0289769258, Paulino Alvarado

0289573189, Otis Hyatt

0267780377, Precious Reid

0291456317, Gabriel Laborde

0291456317, Nilda Rivera

0287406367, Cynthia Crawford

0297442121, Juan Sanchez-Herrera

0300069754, Leon Body

0298079211, Sonya Smith

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108 New South Road
Hicksville, New York
December 5, 2013
11:47 a.m.

VOLUME III

CONTINUED EXAMINATION UNDER OATH

OF

DR. RICHARD G. HARVEY

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BY: LOUIS CHISARI, ESQ.
ANDREW COX, ESQ. (where noted)

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(Exhibits M through T were
premarked for identification as of
this date.)

R I C H A R D G. H A R V E Y, D. C., the
Witness herein, having been first duly sworn
by a Notary Public in and of the State of New
York, was examined and testified as
follows:

CONTINUED EXAMINATION BY
MR. MARVIN:

MR. MARVIN: Dr. Harvey,
good morning. As you know, I'm
Daniel Marvin from Stern &
Montana, and we represent Allstate
in connection with this request
for additional verification in the
form of an Examination Under Oath
or EUO with respect to certain
claims.

Q We have marked as Exhibit M a
letter confirming today's EUO, and annexed to
that letter is a schedule of claimants which
are the subject of this EUO, along with the
claimants that have been previously identified

1 R. Harvey, D.C.
2 in the past two days of testimony.

3 Can you please take a look at
4 the schedule and let me know if you're
5 familiar with those claimants.

6 A (Perusing document.)

7 Yes.

8 Q As we did in previous testimony,
9 I'm going to be referring to Harvey Family
10 Chiropractic, Physical Therapy and Acupuncture
11 PLLC as Harvey Family for short.

12 A Yes.

13 Q And we are here today to discuss
14 these claimants and to verify all aspects
15 relating to the claims which are the subject
16 of this EUO.

17 Did you do anything to prepare
18 for today's testimony?

19 A The only thing I have done is
20 try to send you all the materials that you
21 requested.

22 Q And by "materials," are you
23 referring to the acupuncture, physical therapy
24 and chiropractic progress notes and related
25 documents?

1 R. Harvey, D.C.

2 A Yes.

3 Q Did you review those documents
4 prior to coming here today in preparation for
5 the EUO?

6 A At some point I did, yes.

7 Q Specifically in preparation for
8 the EUO, or during the normal course of your
9 practice?

10 A During the normal course of my
11 practice.

12 Q Did you speak with anyone
13 concerning your testimony here today --

14 A No.

15 Q -- other than your attorney?

16 A No.

17 Q So before we get into the
18 questions, I'm going to remind you of the
19 rules and instructions for the EUO.

20 First, I'm going to be asking
21 you questions; and when you answer, I'm going
22 to assume that you understood my question.
23 And if at any time you don't, please ask me to
24 repeat or rephrase and I will do so. The
25 reason I tell you this is because I'm going to

1 R. Harvey, D.C.

2 rely upon what you tell me in order to verify
3 the various no-fault claims that we will be
4 discussing. Do you understand?

5 A Yes.

6 Q Second, there's a court reporter
7 that's seated to your left that's going to be
8 taking down everything that we say. So in
9 order to allow her to take down an accurate
10 record, I would ask that you provide audible
11 responses out loud with no nods or gestures,
12 as she cannot distinguish those for the
13 record.

14 Also, I'm going to ask that when
15 I'm speaking, you don't try and talk over me,
16 and I will render you that same courtesy so we
17 can get a good record.

18 If you need a break at any time,
19 please let me know and we will take a break.
20 However, if there's a question pending, I ask
21 that you provide a full answer to the question
22 before we break.

23 Finally, you have given an oath
24 today to tell the truth, the whole truth and
25 nothing but the truth. Do you understand the

1 R. Harvey, D.C.

2 oath and obligation that you made?

3 A Yes.

4 Q And do you understand that
5 although we are taking your EUO at your
6 attorney's office, the same rules apply to the
7 oath as if we were in court?

8 A Yes.

9 Q Are you having any physical
10 problems, or are you currently under the
11 influence of any drug, medication or alcohol
12 that would impair your ability to testify
13 truthfully today?

14 A No.

15 Q And finally, with just a note on
16 objections, as I previously told you during
17 prior testimony, this is not an evidentiary or
18 judicial proceeding; and as such, it is not
19 governed by the Rules of Civil Procedure or
20 evidence. Any objections made by your lawyer
21 has no bearing on this proceeding.

22 In the event that your lawyer
23 does object, his objection will be noted for
24 the record, and you should answer the
25 question. If your lawyer instructs you not to

1 R. Harvey, D.C.
2 answer certain questions and you choose not to
3 answer based on the advice of your lawyer,
4 please be advised that your failure to answer
5 the questions asked during your Examination
6 Under Oath could be construed as a failure to
7 cooperate and result in the denial of your
8 claims.

9 Do you have any questions before
10 we begin?

11 A No.

12 Q Just prior to going on the
13 record, you handed me a Third Amended
14 Operating Agreement of Harvey Family
15 Chiropractic, Physical Therapy & Acupuncture
16 PLLC, and we have marked that as Exhibit T.

17 Dr. Harvey, during the prior
18 days' testimony we talked about the first
19 operating agreement and then the second
20 operating agreement, and now we have the third
21 operating agreement. Aside from substituting
22 any names of the managing members of Harvey
23 Family, are there any other substantive
24 changes in the Third Amended Operating
25 Agreement as compared to the first two?

1 R. Harvey, D.C.

2 A No.

3 Q When was this Third Amended
4 Operating Agreement prepared?

5 A I think in November of 2012,
6 possibly.

7 Q Did you prepare it?

8 A No.

9 Q Who did?

10 A An attorney did.

11 Q Is that the same attorney you
12 used for the first and the second operating
13 agreements, Chris Turcotte?

14 A Yes.

15 Q T-U-R-C-O-T-T-E?

16 A Correct.

17 Q Doctor, the agreement you handed
18 me is not signed or executed. Do you have
19 possession of an executed copy?

20 A At my office I do, yes.

21 Q And do you know where it is?

22 A In my office.

23 Q And just out of curiosity, is
24 there a reason why you didn't bring an
25 executed copy today?

1 R. Harvey, D.C.

2 A I got a text this morning that I
3 needed a copy of this, so I just printed it
4 off the computer. I didn't realize this
5 wasn't a signed one.

6 Q The last page of Exhibit T has
7 three signature lines. Are there three
8 signatures on the executed agreement?

9 A Yes.

10 Q Aside from the signatures, are
11 there any other differences between the
12 agreement that you handed me and the agreement
13 you have at your office with the signatures?

14 A No.

15 Q And what was the purpose of the
16 third operating agreement?

17 A I believe it was done when Jin
18 Hwangbo, the new acupuncturist, came in to the
19 office.

20 Q On the agreement you handed me
21 there are three signature lines; one for
22 Bervin Brual, one for you, Richard G. Harvey,
23 and one for Mun Sheih. Do you see that?

24 A Yes.

25 Q Did Mun Sheih sign the document?

1 R. Harvey, D.C.

2 A Yes.

3 Q So as a follow-up, did Jin
4 Hwangbo sign the document?

5 A Yes.

6 Q And where did Jin Hwangbo sign
7 the document?

8 A In my office.

9 Q Well, where on the document,
10 because you indicated --

11 A I think there's another sheet.

12 (Perusing document.)

13 On this page. Everybody signed
14 that page (indicating).

15 Q And this is on Page 14 of the
16 agreement?

17 A Yes.

18 Q So the agreement in your office
19 actually has seven signatures on it?

20 A Correct.

21 MR. MARVIN: Just for the
22 record, we're going to call for
23 the production of the executed
24 agreement.

25 MR. CHISARI: We will take

1 R. Harvey, D.C.

2 it under advisement. Again, we
3 ask all requests be put in
4 writing, which your office has
5 failed to do numerous times.
6 Every EUO we ask for all document
7 requests to be placed in writing,
8 and that never happens.

9 Q Dr. Harvey, did you ever notify
10 the New York State Office of Professions when
11 Jin Hwangbo purportedly became a managing
12 member in November of 2012?

13 A I believe my -- Chris Turcotte
14 did.

15 Q Did you, at any time after you
16 believe he notified the Office of Professions,
17 did you verify that at all?

18 A I don't recall.

19 Q Are you aware at all that
20 according to the Office of Professions, Paul
21 Wong is still listed as a managing member of
22 Harvey Family?

23 A No.

24 MR. MARVIN: I'm just going
25 to mark this for the record. This

1 R. Harvey, D.C.
2 is going to be Exhibit U, which is
3 a copy of the New York State
4 Office of Professions online
5 verifications -- a verification
6 search dated December 4th, 2013,
7 yesterday. It lists the managing
8 members of Harvey Family.

9 (Exhibit U-Office of
10 Professions Online Printout, was
11 marked for identification as of
12 this date.)

13 Q Dr. Harvey, have you ever had an
14 opportunity to visit this Web site or see any
15 other documents relating to the managing
16 members on file with the New York State Office
17 of Professions as the owners and/or managing
18 members of Harvey Family?

19 A No.

20 Q Did you ever have any
21 discussions with Mr. Hwangbo about him
22 becoming the acupuncturist on file with the
23 New York State Office of Professions on behalf
24 of Harvey Family?

25 MR. CHISARI: I'm going to

1 R. Harvey, D.C.
2 object. I'm going to object and
3 instruct him not to answer. He
4 answered earlier saying he relied
5 on Chris Turcotte, his attorney,
6 to do all of that. So I'm going
7 to instruct him not to answer any
8 more of these questions down this
9 line. It's irrelevant and he
10 answered. He relied on his
11 healthcare attorney to do it. So
12 move on to your next smoking gun,
13 please, Counselor.

14 MR. MARVIN: Mr. Chisari,
15 I'm just going to ask that you
16 refrain from your --

17 MR. CHISARI: You can ask
18 all you want.

19 MR. MARVIN: Your colorful
20 language, that's uncalled for.

21 Q Dr. Harvey, we marked as Exhibit
22 O through S documents related to Nancy
23 Martinez, and we will go through them one by
24 one.

25 Is she one of your patients?

1 R. Harvey, D.C.

2 A Yes.

3 Q And are you familiar with her
4 treatment at Harvey Family with regard to all
5 of the services that were performed on her?

6 A Yes.

7 Q And if you could quickly look
8 through Exhibits N through S and let me know
9 if these are documents which were kept in the
10 usual course of Harvey Family's business, and
11 if they are fair and accurate representations
12 of documents that were kept in the course of
13 that business and provided to Allstate in
14 connection with this EUO.

15 A (Perusing document.)

16 Yes.

17 Q Do you recall when Ms. Martinez
18 first appeared at your office for treatment?

19 A I don't recall the specific
20 date.

21 Q Can you approximate, based on
22 the records?

23 A It looks like 6/17 of 2013.

24 Q And when she appeared at Harvey
25 Family, who was the first treatment provider

1 R. Harvey, D.C.

2 she met with?

3 A I believe myself.

4 Q Did you perform the initial
5 chiropractic evaluation on her?

6 A Yes.

7 Q Now, I believe during previous
8 testimony you indicated it's your employee
9 Neil Goldsmith who generally performs all
10 initial chiropractic evaluations on claimants.

11 MR. CHISARI: I'm going to
12 object. Unless you pull out a
13 transcript and say he said
14 something else, I'm not going to
15 allow him to answer with respect
16 to your characterization of prior
17 testimony.

18 MR. MARVIN: Let's go off
19 the record so I can find that spot
20 in the record.

21 (Discussion held off the
22 record.)

23 Q I'm going to refer, Dr. Harvey,
24 to your first day of testimony, which was on
25 January 21st, 2013. Page 98 beginning on Line

1 R. Harvey, D.C.

2 18 through Page 99, Line 24. Rather than read
3 it in the record, Dr. Harvey, I'm going to
4 show you the transcript. I will ask you if it
5 refreshes your recollection, and then your
6 counsel can look at it regarding the testimony
7 on that day.

8 MR. MARVIN: 98 to 99. It
9 goes top to bottom.

10 A (Perusing document.)

11 Okay.

12 Q Does that refresh your
13 recollection that you indicated that typically
14 it's Neil Goldsmith that does all initial
15 evaluations while you are with him in the room
16 taking notes?

17 A Yes.

18 Q Did that procedure take place
19 with the evaluation of Nancy Martinez, if you
20 recall?

21 A I can't say a hundred percent
22 sure.

23 Q Is Neil Goldsmith still an
24 employee of yours?

25 A Yes.

1 R. Harvey, D.C.

2 Q Does he still do initial
3 evaluations?

4 A Yes.

5 Q What were Ms. Martinez's
6 complaints or symptoms when she appeared at
7 your office and you evaluated her, or
8 Mr. Goldsmith evaluated her?

9 A She complained of neck pain,
10 lower back pain, hand pain, tingling into the
11 hand -- into the hands, left knee pain, upper
12 back pain.

13 Q Did she complain of anything
14 else?

15 A It looks like right shoulder,
16 right arm pain.

17 Q And where are all of these
18 complaints indicated on the initial evaluation
19 form, Exhibit N?

20 A We use pictures, and there's
21 also words.

22 Q And where is the knee pain
23 indicated?

24 A Right here (indicating).

25 Q And where is the right shoulder

1 R. Harvey, D.C.

2 pain indicated?

3 A Right here (indicating).

4 MR. MARVIN: And just for
5 the record, Dr. Harvey is pointing
6 to --

7 THE WITNESS: The right
8 shoulder.

9 MR. MARVIN: -- the diagram
10 of a person on the paper.

11 Q And, Dr. Harvey, that was for
12 the knee pain also? That's this circle on the
13 person (indicating)?

14 A Yes.

15 Q And where is the circle for
16 "right shoulder"? Is that this circle
17 (indicating)?

18 A Yes.

19 Q And could you just briefly
20 explain what the results of the examination
21 were in all the various boxes on Exhibit N.

22 And, Dr. Harvey, is this your
23 handwriting? Did you fill this out?

24 A Yes.

25 Q So with respect to the

1 R. Harvey, D.C.

2 examination on the top portion of the form
3 where it lists "biceps, triceps," et cetera,
4 could you explain the examination you
5 performed and what the results were.

6 A Those are reflex tests. And the
7 reflexes --

8 (Interruption at the door.)

9 (Brief recess taken.)

10 A The reflexes were normal, with
11 the exception of the extensor digitorum reflex
12 on the right, which was hypoactive, and the
13 Achilles reflex on the left, which was
14 hypoactive.

15 There were subluxations of C2
16 through C4, C5 through C7 and L4 through S1.
17 There was paraspinal muscle spasm. There was
18 a weakness of the left foot dorsiflexors.
19 Lasegue's test was positive, as was Bragard's
20 test.

21 Q What's a Lasegue's test?

22 A Lasegue's test is a test to test
23 if there's nerve root irritation, and it was
24 positive on the left, as was Bragard's test.

25 Q How was that test performed, the

1 R. Harvey, D.C.

2 Lasegue's test?

3 A You lift up the person's leg and
4 you see if it exacerbates their pain. And
5 Bragard's is the same test, except this time
6 you just bend the foot to stretch the nerve.

7 Q And based upon the initial
8 evaluations, what was your recommended course
9 of treatment for Ms. Martinez?

10 A She was going to undergo a
11 course of chiropractic care with myself.

12 Q And did Ms. Martinez meet with
13 anyone else at Harvey Family's office on
14 June 17th?

15 A I don't believe so.

16 Q Did you recommend that she meet
17 with a physical therapist?

18 A I believe so.

19 Q And why was that?

20 A She was having extremity pain.
21 And for the treatment of extremities, physical
22 therapy is what's recommended.

23 Q And which extremities was she
24 having pain in wherein you recommended that
25 she see a physical therapist?

1 R. Harvey, D.C.

2 A For her right shoulder.

3 Q Did you recommend that she
4 undergo any sort of treatment?

5 A I recommended that she also
6 consult with the acupuncturist.

7 Q At your office?

8 A Correct.

9 Q Did you make any other
10 suggestions to her?

11 A Not that I recall.

12 Q Did she meet with a physical
13 therapist?

14 A Yes, she did.

15 Q And that's at your office?

16 A Yes.

17 Q Do you know when she first met
18 with the physical therapist?

19 A Looking at the record, it looks
20 like 6/19 was the first day she saw the
21 physical therapist.

22 Q That was two days after she saw
23 you?

24 A Correct.

25 MR. MARVIN: Prior to the

1 R. Harvey, D.C.
2 EUO we had requested all
3 prescriptions for physical
4 therapy. Dr. Harvey indicated he
5 believed they were faxed to our
6 office. I don't believe we
7 received prescriptions for
8 physical therapy. So, Counsel, I
9 will put it in writing, and we're
10 going to call for the production
11 of those referrals.

12 Q And I will just ask you,
13 Dr. Harvey, do you know who actually referred
14 Ms. Martinez for physical therapy?

15 A I believe it was Dr. Dynoff.

16 Q And do you know how it was that
17 Ms. Martinez came to meet with Dr. Dynoff?

18 A For pain management I
19 recommended that she see him.

20 Q So you also recommended pain
21 management?

22 A Not that she do, that she
23 consult with him. That's an option for her.

24 Q And that was also on June 17th
25 when you first met with her, if you recall?

1 R. Harvey, D.C.

2 A Either the 17th or the 19th. I
3 don't exactly remember what day I recommended
4 it to her.

5 Q And why was it that you felt she
6 needed pain management?

7 A She was having a lot of pain.

8 Q What parts of the body were most
9 painful for her where you felt pain management
10 would be helpful?

11 A From my aspect, her neck and
12 back.

13 Q Let's turn quickly to Exhibit O,
14 which are your progress notes. Are you
15 familiar with the progress notes in Exhibit O?

16 A Yes.

17 Q You prepared all of those
18 yourself during the normal course of your
19 treatment of Ms. Martinez?

20 A Yes.

21 Q Could you just briefly describe
22 what sort of treatment you gave to
23 Ms. Martinez, chiropractic treatment, and
24 where you gave her that treatment.

25 A She received spinal adjustments

1 R. Harvey, D.C.

2 to her neck and back.

3 Q What part of the spine, neck or
4 back did she receive the treatment on?

5 A On 6/18 from C3 to C7 and L2
6 through S1.

7 Q And is it common to change the
8 areas of treatment as you go along during the
9 course of a patient's treatment? By "areas" I
10 mean the parts of the spine, neck and back.

11 A Depending on what shows on each
12 visit, yes.

13 Q Are you still treating
14 Ms. Martinez?

15 A Yes.

16 Q Has she improved?

17 A She has shown improvement, yes.

18 Q Doctor, at some point you
19 referred Ms. Martinez for electromyography and
20 nerve conduction velocity testing of her upper
21 extremities, correct?

22 A Yes.

23 Q Do you remember what symptoms
24 she was demonstrating which caused you to
25 refer her for that testing?

1 R. Harvey, D.C.

2 A I believe she was having
3 radiating arm pain and weakness, and we wanted
4 to determine where it was coming from, whether
5 it was coming from the neck or it was coming
6 from the nerve in the shoulder or the elbow or
7 the wrist, to assess -- to see exactly if any
8 other type of treatment was necessary.

9 Q Were you able to determine that
10 based on the electromyography and nerve
11 conduction velocity testing that she received?

12 A I don't recall the results
13 offhand.

14 Q If you turn to Exhibit R, let me
15 know if you're familiar with that document.
16 And if so, what it is?

17 A I am familiar with this
18 document.

19 Q And what is it?

20 A This was a nerve conduction
21 study which was done of the upper extremity.
22 And the conduction study was done on 7/23 of
23 2013.

24 Q By whom?

25 A By Dr. Goldsmith.

1 R. Harvey, D.C.

2 Q And this was through North
3 Yonkers Chiropractic Services, P.C.?

4 A Correct.

5 Q Are you familiar with that
6 company?

7 A Correct.

8 Q What is that company?

9 A That's Dr. Goldsmith's company.

10 Q I see the address is the same
11 of -- 984 North Broadway, Suite L-09, Yonkers,
12 New York is the same as Harvey Family. Does
13 North Yonkers Chiropractic Service, P.C. lease
14 space from Harvey Family?

15 A Yes.

16 Q Is there a lease agreement?

17 A Yes.

18 Q When was that agreement
19 executed, if you remember?

20 A I don't recall.

21 Q You can approximate.

22 A Years ago. I don't recall when.

23 Q Do you recall the terms of the
24 lease agreement?

25 A No.

1 R. Harvey, D.C.

2 Q Do you have a copy of the lease
3 agreement?

4 A Yes.

5 Q Where do you maintain that?

6 A It would be in my office
7 somewhere.

8 Q And specifically, what space
9 does North Yonkers Chiropractic Services,
10 P.C. -- how much space does the corporation or
11 the company lease from you?

12 A He has access to all -- any of
13 the treatment rooms in my office that he needs
14 at a particular time.

15 Q And when you say "he," you're
16 referring to Neil Goldsmith?

17 A Dr. Goldsmith, yes.

18 Q And does Dr. Goldsmith perform
19 the NCV -- just for short, EMG/NCV testing --
20 when I say that, I'm referring to
21 electrodiagnostic testing.

22 Does Dr. Goldsmith perform that
23 EMG/NCV testing as needed on any given patient
24 during the course of his employment?

25 A Yes.

1 R. Harvey, D.C.

2 Q And by that I mean does he have
3 an agreement whereby he comes on certain days,
4 Dr. Goldsmith, when he's not working for you,
5 just to perform EMG/NCV testing, or is it
6 during the course of him working for you
7 during his typical --

8 A Typically he has specific times
9 that he will see patients for EMGs.

10 Q And what times are those?

11 A Typically in the morning. He
12 will usually do it between 10:00 and 12:00.
13 In the afternoon typically I think it's
14 between 2:00 and 4:00.

15 Q During those hours, does he also
16 see patients for regular evaluations at Harvey
17 Family?

18 A If he's not doing his nerve
19 testing, he will.

20 Q And we discussed Dr. Goldsmith
21 during the previous testimony. He's a
22 full-time employee of Harvey Family?

23 A Yes.

24 Q And could you just, again for
25 the record, state what his hours are.

1 R. Harvey, D.C.

2 A He's in my office from 10:00 to
3 approximately 7:30 on Monday, Tuesday,
4 Wednesday and Friday. Thursday from 10:00 to
5 2:00, and occasionally on a Saturday.

6 Q Is he paid by the hour or is he
7 salaried?

8 A He has a salary.

9 Q Is it the same salary we
10 discussed at the prior testimony?

11 A Yes.

12 Q And for the record, could you
13 just refresh our recollection of what it is.

14 A I don't know the exact salary.

15 Q But it's the same as what it
16 was?

17 A Yes.

18 Q And with regard to the lease
19 agreement which you indicated was signed, you
20 said, years ago, is there a way you could
21 narrow that down a little bit? Was it signed
22 more than a year ago?

23 MR. CHISARI: I'm going to
24 object and tell him not to answer.
25 We have gone through it. He said

1 R. Harvey, D.C.

2 he doesn't remember. It's years
3 ago. You called for production of
4 it. If he has it, it will have a
5 date on it.

6 Q Do you recall who signed that on
7 behalf of North Yonkers Chiropractic Services,
8 P.C.?

9 A I believe it would be
10 Dr. Goldsmith.

11 Q Do you recall who prepared the
12 lease agreement?

13 A No.

14 Q Do you recall if Dr. Goldsmith
15 or one of his representatives prepared it, or
16 was it you and/or one of your representatives
17 that prepared it?

18 MR. CHISARI: I'm going to
19 object again. He answered he
20 doesn't know who prepared it. How
21 many different ways are you going
22 to ask him the same question?

23 A I don't recall.

24 Q Do you recall how long the lease
25 agreement was for?

1 R. Harvey, D.C.

2 A No.

3 Q Do you recall if there have ever
4 been amendments to or extensions of the lease
5 agreement?

6 A Not that I'm aware of.

7 Q Do you recall the amount that
8 North Yonkers Chiropractic Services, P.C. pays
9 to Harvey Family pursuant to the lease
10 agreement?

11 A No.

12 Q Turning back to Ms. Martinez's
13 electrodiagnostic reports, can you tell me
14 what the results were.

15 A The results showed that there
16 was no evidence of carpal tunnel syndrome or
17 cervical radiculopathy or peripheral
18 neuropathy.

19 Q And based on that report, did
20 your treatment of her change?

21 A No.

22 Q And if the report had shown
23 positive findings of carpal tunnel syndrome,
24 cervical or peripheral neuropathy, would your
25 treatment have changed?

1 R. Harvey, D.C.

2 A Yes.

3 Q If there was just a finding of
4 carpal tunnel syndrome, would your treatment
5 have changed?

6 A Well, there's certain
7 recommendations I would have made to her at
8 that point.

9 Q Dr. Harvey, let's turn to the
10 physical therapy progress notes for Nancy
11 Martinez. And this would be Exhibit P. Are
12 you familiar with these progress notes?

13 A Yes.

14 Q Do you know who prepared these
15 progress notes?

16 A The physical therapist.

17 Q And who is that?

18 A Bervin Brual.

19 Q Did Bervin Brual prepare all of
20 these progress notes?

21 A Yes.

22 Q And are these progress notes
23 prepared contemporaneously at the time of
24 treatment, to the best of your knowledge?

25 A Yes.

1 R. Harvey, D.C.

2 Q And that's for each individual
3 date?

4 A Yes.

5 Q And could you just briefly
6 explain the procedure for filling out these
7 progress notes during Nancy Martinez's
8 treatment. How is that done?

9 A The therapist will assess the
10 patient; and based on the assessment, they
11 will mark on the record what the complaints
12 are.

13 Q Are all of the markings on the
14 SOAP notes entered as the patient is being
15 evaluated?

16 A I believe so.

17 Q What is that belief based on?

18 A Conversations I have had with
19 him in the past.

20 Q When you say "him," are you
21 talking about Mr. Brual?

22 A Correct.

23 Q On the SOAP notes, you see at
24 the top there is a section called "PX C/O."
25 Do you see that?

1 R. Harvey, D.C.

2 A Yes.

3 Q What is that?

4 A I'm not familiar with that.

5 Q Who would be familiar with that?

6 A Possibly my biller or Mr. Brual.

7 Q Now, next to "PX C/O" do you see
8 there are six possible indications which read:
9 "Shooting, dull aching, constant,
10 intermittent, localized" and "radiating"?

11 A Yes.

12 Q To your knowledge, what are
13 those words with boxes next to them there for?

14 A That's an assessment of what the
15 patient is stating to the therapist as to what
16 they're feeling.

17 Q And so to your knowledge, is the
18 patient asked on each visit to describe the
19 pain they're feeling?

20 A Yes.

21 Q And based upon the conversation
22 between Mr. Brual and the patient, is it your
23 understanding that Mr. Brual checks off what's
24 told to him by the patient?

25 A Yes.

1 R. Harvey, D.C.

2 Q Dr. Harvey, on the physical
3 therapy progress notes, do you see the "O"
4 section, the objective assessment?

5 A Yes.

6 Q And on there, do you see there
7 are eight possible things which could be
8 checked off?

9 A Yes.

10 Q Could you describe what each one
11 of those are.

12 A The first one is "Muscle spasm."

13 Q And what is your understanding
14 as to when that would be checked off?

15 A If the patient has muscle spasm.

16 Q Is that common with the type of
17 injuries which are seen at Harvey Family?

18 A Yes.

19 Q And the next box?

20 A "Tenderness."

21 Q And could you describe what that
22 means.

23 A Upon palpation, if it's tender
24 or not.

25 Q And by "tender," what do you

1 R. Harvey, D.C.

2 mean?

3 A Painful.

4 Q And is that common in the type
5 of injuries which present at Harvey Family for
6 physical therapy?

7 MR. CHISARI: I'm going to
8 object and instruct my client not
9 to answer that question because
10 it's makes no sense. "Type of
11 injuries"? In reference to what;
12 car accidents, people falling off
13 a ladder, people who trip and fall
14 in the street?

15 Because we can say that in
16 a chiropractor's office, most
17 people who walk in have muscle
18 spasm, tenderness, neck pain, back
19 pain, elbow pain, shoulder pain.

20 Q Dr. Harvey, with patients that
21 are typically in automobile accidents, is it
22 common for them to have tenderness?

23 A Yes.

24 Q The next box is
25 "Swelling/edema." Could you explain under

1 R. Harvey, D.C.

2 what circumstances that box would be checked
3 off.

4 A If someone had swelling or
5 edema.

6 Q Is that common in individuals
7 who have been injured in automobile accidents
8 that present to your office?

9 A It's one of the findings that
10 can be seen.

11 Q And tightness, based upon what
12 we have discussed so far -- I guess if someone
13 complains of tightness, that would be checked
14 off?

15 A Yes.

16 Q Is tightness a common symptom of
17 people who have been injured in automobile
18 accidents who present to Harvey Family for
19 physical therapy?

20 A Yes.

21 Q And "Redness," which is the next
22 box --

23 A Yes.

24 Q -- is that also a common
25 symptom?

1 R. Harvey, D.C.

2 A If someone has been bruised,
3 yes.

4 Q There's two more sections in
5 that area under "O." One is "ROM," and
6 there's an indication for this claimant, Nancy
7 Martinez, for "Limited." Could you describe
8 what that means.

9 A Her range of motion of that
10 joint was limited.

11 Q And how was that determined?

12 A The therapist checks the joint.

13 Q And can you describe the
14 procedure by which the therapist checks the
15 joint.

16 A He will have them lift the arm
17 up, and he will try and lift the arm up.

18 Q And at what point would the
19 physical therapist determine that the range of
20 motion was limited?

21 A If it's not at its full
22 capacity.

23 Q And by "full capacity," what
24 does that mean?

25 A Its full range of motion.

1 R. Harvey, D.C.

2 Q Let's move to the next section
3 of the progress notes which is the "A." And
4 that's for the assessment?

5 A Yes.

6 Q The first box says, "Tolerated
7 treatment well." When would that box be
8 checked off?

9 A When they tolerate treatment
10 well.

11 Q And what does that mean,
12 exactly?

13 A I guess they were able to
14 undergo the treatment.

15 Q And the next box says "No
16 significant changes since last visit." When
17 would that box be checked off?

18 A If there was no change at all.

19 Q Could you describe what a
20 significant change is to warrant that box
21 being checked off.

22 A If there was a lot less pain or
23 a lot less range of motion, a lot less
24 tightness.

25 Q The next box under "A" is

1 R. Harvey, D.C.

2 "Improvement as anticipated." Could you
3 describe when that box is checked off.

4 A As they go through a session of
5 therapy, and if during the therapy -- they do
6 well during therapy, they will check it off.

7 Q And what does that mean,
8 "Improvement as anticipated"?

9 A That what was worked on showed
10 some improvement, so it must have shown either
11 less pain after, less spasm, more range of
12 motion.

13 Q And finally under "A," the
14 "Continued plan of care" --

15 A That's checked off when the
16 therapist determines that they should continue
17 their plan of care.

18 Q And as far as the physical
19 therapy treatment program which is under "P"
20 on the SOAP notes, which lists "Moist heat,
21 electrical stimulation, therapeutic exercise,
22 massage, ultrasound, paraffin bath, manual
23 therapy, therapeutic activities" and
24 "other" -- do you know how a physical therapy
25 program is determined for claimants which are

1 R. Harvey, D.C.

2 treated at Harvey Family?

3 A Well, there are times that an
4 orthopedist will recommend specific things
5 they want done, and there are times that the
6 therapist just gets a prescription for therapy
7 to a specific area, and they want the
8 therapist to determine what is to be done.

9 Q Is that done on a per-patient
10 basis? In other words, is it different on
11 different claimants depending on --

12 A It can be, yes.

13 Q Now, with regard to the SOAP
14 notes, are you aware if they're ever premarked
15 prior to a patient being treated?

16 A I don't believe -- no, they're
17 not premarked.

18 Q And when you say they're not,
19 are you referring to every single section that
20 we just discussed including the "S, O, A, P,
21 home instructions" and "pain"?

22 A Yes.

23 Q At the bottom of Ms. Martinez's
24 SOAP note, it indicates "HEP." Can you
25 describe what that is.

1 R. Harvey, D.C.

2 A I believe it's home exercises.

3 Q Is it your belief that
4 Ms. Martinez was prescribed home exercises?

5 A Yes.

6 Q Do you know what those home
7 exercises are?

8 A I believe exercises for the
9 shoulder.

10 Q Specifically what was she told
11 to do?

12 A I don't know the specifics.

13 Q Are they indicated anywhere on
14 the documents?

15 A I don't see it specifically on
16 the document, no.

17 Q Who would know the specifics?

18 A The therapist.

19 Q Is that Mr. Brual?

20 A Correct.

21 Q On the physical therapy progress
22 notes on the section indicated "O," there's a
23 box for "MMT." Could you explain what that
24 is.

25 A I'm not sure exactly what that

1 R. Harvey, D.C.

2 signifies.

3 Q Who would know? Again,
4 Mr. Brual?

5 A Correct.

6 Q Did Ms. Martinez's range of
7 motion ever improve during the course of her
8 physical therapy treatment?

9 A I don't know.

10 Q Again, is that something that
11 Mr. Brual would know?

12 A Yes. Just based on looking at
13 it when it says, "Improving as anticipated," I
14 assume that's one of the things that's
15 improving.

16 Q Dr. Harvey, you can see in
17 Exhibit P we have progress notes from
18 June 19th, all the way up through
19 September 9th. Under the "Range of motion"
20 where it's indicated as "Limited," did that
21 ever change during the course of
22 Ms. Martinez's treatment?

23 A It continues to be limited.

24 Q To the best of your
25 understanding, there was no change in her

1 R. Harvey, D.C.

2 range of motion?

3 A It's still limited. There may
4 have been a change. I would have to ask
5 Mr. Brual, but overall it's still limited.

6 Q Now, is it common not to put the
7 degree of limitation on the progress notes?

8 A That I don't know.

9 Q In other words, how would you,
10 reviewing the documents -- or even
11 Mr. Brual -- know over the course of three or
12 four months how the range of motion was
13 improving based on just the word "limited"?

14 A From that I don't know how he --
15 exactly how he determines it.

16 Q What about Ms. Martinez's pain
17 level, which on June 19th, you can see from
18 the first progress report, was at a five
19 indicating "distressing"? During the course
20 of her treatment, how did her pain level
21 change?

22 A There were times it looks like
23 it was a five. There were times it was a six.
24 There were times it was a four. It seems that
25 over all of -- showed, at best, limited

1 R. Harvey, D.C.

2 improvement.

3 Q So, Dr. Harvey, for example, on
4 August 30th, if you could look at that
5 progress note, you can see she indicated --
6 Ms. Martinez indicated shoulder pain of four
7 on a scale of zero through ten, which is
8 "discomforting." Do you see that?

9 A Yes.

10 Q And on the next visit on
11 September 4th, 2013, she lists shoulder pain
12 two grades higher as a six, which is
13 "distressing." Do you see that?

14 A Yes.

15 Q Do you also see on the SOAP
16 notes there's an indication of "Improvement as
17 anticipated" checked, and also "Continued plan
18 of care" being checked? And do you also see
19 that the box indicated "No significant changes
20 since last visit" is unchecked?

21 A Yes.

22 Q Is a change in pain from a four,
23 "discomforting," to a six, "distressing,"
24 considered a significant change since the last
25 visit?

1 R. Harvey, D.C.

2 A Some people consider it
3 significant; some people consider it not
4 significant. It's basically a 20 percent
5 change.

6 Q Do you consider that
7 significant?

8 A No.

9 Q What change would you consider
10 significant?

11 MR. CHISARI: I'm going to
12 object, and I'm going to instruct
13 my client not to answer that
14 question.

15 Are you asking a
16 hypothetical, Counselor, or are
17 you --

18 MR. MARVIN: I'm asking
19 him --

20 MR. CHISARI: His opinion?

21 Q On the pain scale of zero to
22 ten, how many grades would it have to change
23 for you to consider it significant enough to
24 warrant checking that on this box?

25 A Probably about a 50 percent

1 R. Harvey, D.C.

2 change.

3 Q We discussed how this patient's
4 range of motion remained limited from the
5 first day of her treatment to the last one we
6 were discussing, correct?

7 A Yes.

8 Q And we also discussed how her
9 pain went from a five, sometimes to a four,
10 and up to a six as of the last week of her
11 treatment; is that correct?

12 A Yes.

13 Q Can you explain why the plan of
14 care she was initially prescribed didn't
15 change, despite the fact that her range of
16 motion didn't improve over several months and
17 her pain stayed the same, or even went up as
18 of the last week of her treatment.

19 A I believe that the therapist
20 thought that with further care he could get
21 improvement.

22 Q And what further care? What
23 type of care?

24 A Continued therapy.

25 Q Do you specifically know the

1 R. Harvey, D.C.

2 type of therapy that Ms. Martinez performed in
3 your office on her shoulder?

4 A Based on the record, it looks
5 like she had moist heat, she had electrical
6 stimulation, she had exercise and she had
7 manual therapy.

8 Q And can you describe what the
9 exercise consisted of.

10 A They would put her joint through
11 different ranges of motion, through different
12 strengthening exercises. The specifics I
13 wouldn't know.

14 Q Again, is that something that
15 Mr. Brual would know?

16 A Yes.

17 Q Dr. Harvey, take a look at
18 Exhibit N at the writing indicated by
19 Mr. Brual. In particular, the word "Limited,"
20 a circle of the word "Shoulder," indication of
21 "Home exercise program." Can you please look
22 at those words between all the different SOAP
23 notes.

24 A Yes.

25 Q And would you also look at the

1 R. Harvey, D.C.
2 checkmarks in the "O" section and the "A"
3 section and the "P" section.

4 A Yes.

5 Q Dr. Harvey, comparing these SOAP
6 notes from June 19th to September 9th, would
7 you agree that they're actually photocopies of
8 each other, with the exception --

9 MR. CHISARI: Objection.
10 You're not even going there. Now
11 you're alleging some kind of
12 fraud. Unless you have a basis
13 for it, other than asking does it
14 look like a photocopy, he's not
15 answering the questions. The
16 records are what they are. They
17 speak for themselves.

18 Q You can answer.

19 MR. CHISARI: No, you
20 can't. Don't answer the question.

21 Q Doctor, were these SOAP notes --
22 were each of these SOAP notes filled out
23 contemporaneously with the treatment of
24 Ms. Martinez?

25 A Yes.

1 R. Harvey, D.C.

2 Q And is it your testimony that's
3 with regard to every pen mark made on these
4 SOAP notes?

5 A Yes.

6 Q Now, we talked a moment ago
7 about the "HEP," the home exercise program.
8 You said you believed there was a home
9 exercise program; is that correct?

10 A Yes.

11 Q And with regard to Ms. Martinez,
12 are you aware if she engaged in a home
13 exercise program?

14 A I believe she did.

15 Q What's that belief based on?

16 A She's been compliant with
17 everything else we recommended, so I don't see
18 why she wouldn't be doing it.

19 Q Was she given a home exercise
20 program to participate in?

21 A If he wrote it there, yes.

22 Q Now, Dr. Harvey, at an EUO on
23 October 2nd of this year we spoke with
24 Ms. Martinez, and she denied being given a
25 home exercise program. Is that inconsistent

1 R. Harvey, D.C.

2 with your belief?

3 MR. CHISARI: Objection.

4 Don't answer that. I don't have
5 an EUO in front of me. I'm not
6 going to let him answer questions
7 about your characterizations of
8 somebody else's testimony who is
9 not here, and we don't have a copy
10 of the transcript.

11 Q You can answer.

12 MR. CHISARI: No, you
13 can't, Doctor. Don't answer that
14 question.

15 Q I'm just going to remind you
16 that any failure to answer questions could be
17 considered a failure to cooperate with the EUO
18 and warrant an independent basis for the
19 denial of the claims.

20 MR. MARVIN: And we will
21 allow a judge --

22 A I know that he gave her
23 exercises to do.

24 Q Do you know what exercises?

25 A I don't know the specific, I

1 R. Harvey, D.C.

2 just know.

3 MR. MARVIN: Please mark
4 this.

5 (Exhibit V-Physical Therapy
6 Progress Notes, was marked for
7 identification as of this date.)

8 Q With respect to Ms. Martinez
9 being given moist heat treatments, she was
10 given moist heat treatments?

11 A Yes.

12 Q Can you describe what that is
13 and what the benefits of that are.

14 A The moist heat helps to relax
15 the area, make it easier to work on.

16 Q How long does the treatment
17 last?

18 A I don't know exactly how long it
19 lasts.

20 Q Is that also something Mr. Brual
21 would know?

22 A Yes.

23 Q And electrical stimulation is
24 also indicated as being given to Ms. Martinez.
25 Can you describe what that is.

1 R. Harvey, D.C.

2 A A machine that we -- that
3 delivers electromuscle stimulation to the
4 body, and that's put on the area.

5 Q Do you know the type of machine
6 that's used?

7 A I don't know the exact name of
8 it. It's a high volt galvanic machine. I can
9 get you the brand of it, if you like.

10 Q With respect to therapeutic
11 exercises, I think you may have said you're
12 not sure what exercises she was actually
13 given; is that correct?

14 A Right. I don't know the
15 exercises.

16 Q And that's something that
17 Mr. Brual would know?

18 A Correct.

19 Q And the manual therapy, can you
20 describe what she was given.

21 A That would be with the hands
22 working on the joint. Almost like trigger
23 point work, pressure work on the joint.

24 Q We have marked as Exhibit V,
25 Dr. Harvey, physical therapy progress notes

1 R. Harvey, D.C.
2 with respect to -- these are all of the
3 physical therapy progress notes we received by
4 your office in connection with today's EUO. I
5 will actually read off the claimants that we
6 have here. I will just need Exhibit A.

7 The names are Juan Carlos
8 Sanchez Herrera, Cynthia Crawford, Nilda
9 Rivera, Jose Moran, Jeanne Poniros, Nancy
10 Martinez, who we have discussed. It looks
11 like Luan Alamo, Gabriel Laborde, Leon Body.

12 Dr. Harvey, can you please take
13 a look at these SOAP notes. It's
14 approximately 200 pages representing 200
15 separate treatments for those claimants.

16 A (Perusing documents.)

17 Yes.

18 Q Are you familiar with those
19 records?

20 A Yes.

21 Q And those are fair and accurate
22 copies of the records that you provided to our
23 office?

24 A Yes.

25 Q And would you agree, all of

1 R. Harvey, D.C.

2 these progress reports are of the same type
3 that were filled out in connection with Nancy
4 Martinez?

5 A Yes.

6 Q And take a look at the SOAP
7 notes, the pain section which we previously
8 discussed, where "Shooting, dull, constant,
9 intermittent, localized" or "radiating pain"
10 could be checked. Do you see that section?

11 A Yes.

12 Q Would you agree, according to
13 the SOAP notes, the pain described for every
14 single patient on every single date of
15 treatment on all 200 of them were shooting,
16 intermittent and localized?

17 A Yes.

18 Q In the practice of physical
19 therapy among these patients, is it common for
20 a claimant to never describe a dull, aching
21 pain?

22 A In these cases, I guess so.

23 Q And what about a constant pain?
24 Is it common for a claimant to never describe
25 a constant pain?

1 R. Harvey, D.C.

2 A For these patients?

3 Q Do you know if these patients
4 ever described a dull, aching or constant pain
5 during the course of their physical therapy?

6 A Not based on the record.

7 Q And what about a radiating pain?
8 Do you know if any of these claimants
9 complained of a radiating pain?

10 A Not on -- not based on the
11 record.

12 Q Dr. Harvey, moving on to the
13 objective findings section, which we discussed
14 previously, and we talked about the possible
15 finding of "muscle spasm, tenderness,
16 swelling, tightness, redness" or "other,"
17 those six possible types of diagnosis which
18 could be checked, would you agree that with
19 respect to all, approximately, 200 of these
20 SOAP notes for every date of treatment for
21 every claimant, each one of them indicates
22 muscle spasm, tenderness and tightness?

23 A Yes.

24 Q In the practice of physical
25 therapy, is it common for a claimant to never

1 R. Harvey, D.C.

2 have swelling, edema, redness or anything
3 which could be characterized as "other"?

4 A In these cases, yes.

5 Q Are you aware of any claimants
6 which are the subject of this EUO which had
7 physical therapy in which "swelling, edema,
8 redness" or "other" was checked on one of
9 their daily progress notes?

10 A Not that I know of offhand.

11 Q Looking again at the "O" section
12 of the progress reports, "Range of motion
13 limited," do you see that?

14 A Yes.

15 Q Would you agree that on, I
16 believe every one of the approximately 200
17 progress notes, the range of motion is
18 indicated as "Limited"?

19 MR. CHISARI: If that's
20 what the records say, that's what
21 he'll testify to.

22 A Yes.

23 Q Moving on to the "A" section of
24 the, approximately, 200 daily progress notes
25 in Exhibit V, in terms of the assessment,

1 R. Harvey, D.C.

2 would you agree that it was identical for
3 every claimant on every visit? And by
4 "identical" I mean it's indicated that they
5 tolerated treatment well, improvement as
6 anticipated and to continue plan of care?

7 A Yes.

8 Q And with regard to these
9 claimants which are the subject of these,
10 approximately, 200 SOAP notes, if the range of
11 motion continued to be limited for every
12 claimant, why was the plan of care continued,
13 if it appeared to not have been helping?

14 A Well, it's limited, but they
15 felt it was helping, and felt with continued
16 care it would continue to help. Even though
17 it's limited, there's different degrees of
18 limitation.

19 Q Now, are there any records that
20 you know of which would indicate how that
21 range of motion was improving over time?

22 A Not that I know of.

23 Q And with regard to the physical
24 therapy program for these, approximately, 200
25 daily progress notes, would you agree that it

1 R. Harvey, D.C.

2 was identical for every claimant on every
3 date?

4 A Yes.

5 Q And that's with moist heat,
6 electrical stimulation, therapeutic exercise
7 and manual therapy?

8 A Yes.

9 Q Dr. Harvey, is there any
10 difference on how a claimant would receive
11 physical therapy on, say, their shoulder, as
12 compared to their ankle or their hip?

13 A I'm not sure what you mean by --
14 I don't understand the question.

15 Q In terms of a physical therapy
16 program which would be prescribed to a
17 claimant who had, say, a shoulder injury,
18 would it be the same as a physical therapy
19 program for someone who, say, had an ankle
20 injury in terms of the possible types of
21 services which could be given?

22 A Yes.

23 MR. MARVIN: Can you read
24 back my question.

25 (Record read.)

1 R. Harvey, D.C.

2 Q Would you please turn to the
3 physical therapy notes for Juan Carlos
4 Herrera.

5 A (Perusing documents.)

6 Yes.

7 Q Sorry, that's Juan Carlos
8 Sanchez Rivera.

9 A I have Juan Carlos Sanchez
10 Herrera.

11 Q Actually, you are right. It is
12 Herrera. My apologies.

13 (Recess was taken.)

14 Q So we were talking about
15 Mr. Herrera. What part of the body did
16 Mr. Herrera receive physical therapy on?

17 A It appears his shoulder and
18 ankle and foot.

19 Q And with regard to a claimant
20 like Mr. Herrera who receives physical therapy
21 on multiple parts of the body, how is it that
22 these reports distinguish the objective
23 findings, the assessment and the physical
24 therapy program, as between those different
25 body parts?

1 R. Harvey, D.C.

2 A I don't see a distinction.

3 Q Was there a distinction with
4 Mr. Herrera between the type of -- well, with
5 the assessment of his shoulder as compared to
6 his ankle?

7 A I would assume so. It just
8 looks like it wasn't documented properly.

9 Q And would that be with regard to
10 every progress note which is in Exhibit V?

11 MR. CHISARI: I'm going to
12 ask my client to go through every
13 one. I'm not going to ask him to
14 do a generalization.

15 A It looks like he did not
16 differentiate between the different body parts
17 as far as the subjective complaints as to
18 whether -- well, wait. Sorry, can you repeat
19 the question.

20 Q We were talking about the
21 objective findings as well as the assessment.

22 A Right.

23 As far as the assessment, I have
24 to assume both areas, "Tolerated treatment
25 well," "Improvement as anticipated" and

1 R. Harvey, D.C.

2 "Continued care of plan" since he didn't
3 differentiate.

4 Q And what about objective
5 findings?

6 A I would assume both areas, based
7 on this, showed spasm, tightness, tenderness.

8 Q Now, Doctor, you're assuming
9 that. Is it fair to say you don't know for
10 sure?

11 A Correct.

12 Q And is it also fair to say
13 Mr. Brual would have knowledge of that?

14 A Yes.

15 Q With regard to other claimants
16 which are subject of today's EUO which also
17 received treatment to more than one area, but
18 which the objective findings only have the one
19 checkmark, is it also fair to say that with
20 respect to those claimants, that the objective
21 findings weren't documented properly?

22 A Well, I wouldn't say they
23 weren't documented properly. They're
24 documented. If he's not differentiating them,
25 I have to assume that there was the spasm,

1 R. Harvey, D.C.

2 tenderness and tightness and limited range of
3 motion of both of those areas.

4 Q With respect to those claimants,
5 it's fair to say you don't know for sure,
6 though, correct?

7 A I don't know for sure, but based
8 on this record, again, I have to assume that
9 both those areas showed these complaints,
10 showed these objective findings.

11 Q Is Mr. Herrera still being
12 treated by you?

13 A Yes.

14 Q Do you know if his physical
15 therapy is working?

16 A I can't say a hundred percent
17 sure. It looks like there are days it's
18 helping him and days it gets worse, and days
19 better. I can't say a hundred percent sure
20 what his percent of improvement is.

21 Q With respect to the other
22 claimants for which we reviewed the progress
23 notes, do you know if any of those claimants
24 have seen improvement in the physical therapy?

25 A I believe they have seen

1 R. Harvey, D.C.
2 improvement by the checkmarks saying
3 "Improvement as anticipated."

4 Q And do you know any specifics
5 regarding the nature of the improvement with
6 regard to any specific claimant?

7 A No.

8 Q Again, is that something that
9 Mr. Brual would know?

10 A Yes.

11 MR. MARVIN: Let's mark
12 this as the next exhibit, since
13 we're talking about Mr. Herrera,
14 some of his acupuncture notes.

15 (Exhibit W-Acupuncture
16 notes of Mr. Herrera, was marked
17 for identification as of this
18 date.)

19 Q So we marked W. Dr. Harvey, are
20 those acupuncture notes and reports related to
21 Mr. Herrera as kept in the usual course of
22 Harvey's business, and which were provided to
23 Allstate in connection with this EUO?

24 A Yes.

25 Q And could you explain what this

1 R. Harvey, D.C.

2 first page is, which at the top indicates "TCM
3 diagnosis."

4 A It looks like a tongue
5 diagnosis.

6 Q And why is a tongue diagnosis
7 performed?

8 A As an acupuncturist they do
9 that. It gives them clues as to what problems
10 the patient might be having.

11 Q How is the tongue diagnosis
12 performed?

13 A Well, he will look at it, he
14 will touch it, he will check the pulse.

15 Q And in this case, the color is
16 indicated as "Dark red." Do you see that?

17 A Yes.

18 Q And what does that mean?

19 A His tongue was dark red.

20 Q Well, I know. In terms of
21 acupuncture treatment or diagnosis, what does
22 it mean for one to have a dark-red tongue?

23 A With the overall assessment, it
24 helps them clue in to help treat the patient.

25 Q Does a dark-red tongue

1 R. Harvey, D.C.

2 specifically mean anything as compared to
3 purple, bright red, pale red, which are the
4 other colors that are indicated?

5 A I don't know the exact
6 difference.

7 Q Again, is that something that
8 the acupuncturist would know?

9 A Yes.

10 Q And that's Mr. Hwangbo?

11 A Yes.

12 Q The coating can be either clear,
13 thin or thick or white, yellow or black. Do
14 you see in this instance "thin" is circled?

15 A Yes.

16 Q And in terms of an acupuncture
17 diagnosis, what does it mean for the coating
18 to be thin?

19 A That's the finding that was seen
20 when he examined the tongue.

21 Q Right. I understand that's the
22 finding, but what does it mean if the coating
23 is thin?

24 A It means it was thin.

25 Q And by "coating" -- what is the

1 R. Harvey, D.C.

2 coating of the tongue?

3 A The surface of the tongue.

4 Q Moving on.

5 MR. CHISARI: I was going
6 to say saliva, Doctor, is that
7 what they mean by that, or
8 something else?

9 THE WITNESS: I just
10 believe it's the actual coating on
11 the touch on touch, on palpation.

12 Q And by "Body," there's a next
13 indicating. It could be "teeth mark, fissure
14 in the middle," and what's written in here is
15 "horizontal/geographic crack." Can you
16 explain what that means.

17 A I don't know the exact
18 significance of it.

19 Q And as far as "Pulse diagnosis,"
20 which is circled as "Wiry" and "Slippery,"
21 what does that mean?

22 A Those are acupuncture terms to
23 help assess the patient.

24 Q Do you know what those terms
25 mean?

1 R. Harvey, D.C.

2 A I don't know how to categorize
3 it specifically, no.

4 Q Is that also Mr. Hwangbo would
5 be able to describe if he was here?

6 A Yes.

7 Q In terms of the acupuncture
8 diagnosis, what's the diagnosis here?

9 A "Posttraumatic."

10 Q And what does that mean?

11 A The patient had some type of
12 trauma.

13 Q In addition, right underneath
14 the diagnosis, it says "Involve in the
15 organ/meridian of." Do you see that, Doctor?

16 A Yes.

17 Q And then there's a few
18 checkmarks under certain terms.

19 A Yes.

20 Q Can you describe what that first
21 term is, "SI/UB Tai-Yang."

22 A It's a small intestine point.

23 Q And the checkmark next to the
24 "GB/SI Shao-Yang"?

25 A That's a gallbladder point.

1 R. Harvey, D.C.

2 Q And the next one, "LI/ST
3 Yang-Ming"?

4 A It's a large intestine point.

5 Q And the "DU"?

6 A "DU"?

7 Q Is that a "DU" next to it?

8 A The "DU" is -- that's -- it's a
9 point for the center of the spine.

10 Q And the "LU/SP Tai-Yin"?

11 A The LU is a tongue point.

12 Q So this patient had a diagnosis
13 of some sort of trauma, you indicated. Is it
14 in those points which we just discussed?

15 A The points that he's checking
16 off are points where he finds that -- those
17 are points if he works on, will help this
18 patient in his overall recovery.

19 Q And how does he determine that
20 those are the points which should be worked
21 on?

22 A By doing his assessment of the
23 patient with the color, the coating, the body,
24 the pulse diagnosis.

25 Q Now, also on this page at the

1 R. Harvey, D.C.

2 very top it looks like it's written "Dark
3 pale, SLVT." Do you see that?

4 A Yes.

5 Q What does that mean?

6 A I believe it has to do with the
7 skin, but I'm not a hundred percent sure.

8 Q Is that also something that
9 Mr. Hwangbo would know?

10 A Yes.

11 Q Now, on the next page, Doctor,
12 where it lists "Meridian points commonly used
13 in therapy," there are four of six checked
14 off? Do you see those?

15 A Yes.

16 Q Do you know where those meridian
17 points are? Let's start with the first one,
18 "Neck pain." "B20, 21, S13, UB10" and "11."
19 Do you know where all of those meridian points
20 are?

21 A The those are -- that's -- the
22 SI is a small intestine point. The UB is a --
23 the UB is along the back, the SI is along the
24 front of the abdomen. The B is --

25 Q Doctor, if I could stop you, you

1 R. Harvey, D.C.

2 appear to be reading from something.

3 A Yes, the notes. I consulted
4 with my acupuncturist. The last time you
5 asked me these questions I didn't know them,
6 so I figured I would be prepared.

7 Q That's Mr. Hwangbo?

8 A Yes.

9 Q So the information you're
10 telling me now is information he told you?

11 A Yes.

12 Q When did you speak to
13 Mr. Hwangbo?

14 A The last few weeks.

15 Q In preparation for the EUO,
16 today?

17 A Yes.

18 Q I think I asked you when we
19 started if you spoke to anyone in the
20 preparation for the EUO and you indicated
21 "no." Are you changing your answer now?

22 A I did speak to Mr. Hwangbo. If
23 that's what I said, yes.

24 Q Did you speak with anyone else?

25 A Not that I recall.

1 R. Harvey, D.C.

2 Q Doctor, do you have any
3 firsthand knowledge, other than what was told
4 to you by Mr. Hwangbo, as to what any of these
5 points are?

6 A No, I'm not an acupuncturist.

7 Q Doctor, if you could turn to the
8 third-to-last page, which is the first
9 progress note for Mr. Sanchez, first
10 acupuncture progress note --

11 A Yes.

12 Q -- could you describe the
13 procedure or process as to how acupuncture was
14 given to Mr. Herrera.

15 Well, let's start with the first
16 day. Let's start with September 3rd, 2013.
17 Can you describe the points, the acupuncture
18 points, that he was given acupuncture on and
19 the reasons why.

20 A He was given acupuncture
21 treatment to point SP3, LI11. He was given
22 treatment to those points because those are
23 the points that the acupuncturist assessed
24 would help him to improve.

25 Q And why is it that those points,

1 R. Harvey, D.C.

2 in particular, would help improvement with the
3 pain?

4 A Based on his assessment, those
5 are points that if he works on them, it will
6 help him with the pain.

7 Q The date we're looking at is not
8 September 3rd, it's actually -- Doctor, you're
9 actually on September 10th, I think, correct?
10 The treatment date on the top left.

11 A It says here "Date, 9/3."

12 Q I think that's --

13 A Just tell me what date you want
14 me to go to.

15 MR. MARVIN: Off the
16 record.

17 (Discussion held off the
18 record.)

19 Q So Doctor, on the progress note
20 do you see a diagnosis anywhere under
21 "Findings"?

22 A Under "Findings" I -- he's
23 checked off "Moderate."

24 Q And under that, again it says --
25 what does it say under "Tongue"?

1 R. Harvey, D.C.

2 A Wait. Sorry, I'm not sure.

3 Q Under the "Findings" section,
4 under "Tongue," there's some written notes
5 there. Do you recognize that handwriting?

6 A That's Mr. Hwangbo.

7 Q And what does it say?

8 A It says "Dark, pale."

9 Q What does it say next to "Pale"?

10 A I'm not sure what that word is.

11 Q What does that finding mean?

12 A That's what he -- what he found
13 when he assessed the patient.

14 Q And in terms of the patient
15 receiving acupuncture therapy, how would that
16 finding change or alter the therapy?

17 A Based on what he finds, he
18 will -- it clues him in to what points he's
19 supposed to work on.

20 Q And in what way did this finding
21 change Mr. Herrera's therapy?

22 A I don't know.

23 Q And next to "Pulse" on that same
24 section of the September 3rd acupuncture
25 treatment progress note, what does that say?

1 R. Harvey, D.C.

2 A I think it's "Slippery and wiry"
3 Is what it seems to say.

4 Q His pulse is slippery and wiry?

5 A That's what it appears to say.

6 Q And what does that mean?

7 A It was slippery and wiry based
8 on his evaluation. Those are acupuncture
9 findings and terminology.

10 Q Are you familiar with these
11 terms, other than what was told to you by
12 Mr. Hwangbo?

13 A I'm not a acupuncturist.

14 Q So you're not familiar with the
15 terms, then?

16 A No.

17 Q And the "DX" on the findings
18 section, what does that mean?

19 A It looks like "Q stagnation."

20 Q And what does that mean?

21 A The Q point was stagnated.

22 Q What's the Q point?

23 MR. MARVIN: Let the record
24 reflect Dr. Harvey is looking at
25 his notes that he indicated he

1 R. Harvey, D.C.

2 wrote after speaking with

3 Mr. Hwangbo.

4 A I'm not exactly sure what the Q
5 point is.

6 Q Again, is that something that
7 Mr. Hwangbo would know?

8 A Yes.

9 Q As far as the actual acupuncture
10 treatment which was billed for, could you
11 explain what that treatment consisted of. And
12 let's just pick a date, because I believe
13 they're similar between all dates. Let's just
14 stick with the September 3rd date for now.

15 A On September 3rd he gave 15
16 minutes of acupuncture, then an additional 15
17 minutes of acupuncture. So he will do 15
18 minutes; then he takes the needles out, puts
19 new needles in for an additional 15 minutes.
20 He also uses an infrared heat, and he works on
21 the patient's trigger points with his hands.

22 Q And in terms of the billing for
23 the acupuncture, is the billing for, say, the
24 ankle done separately than on the neck or the
25 shoulder, or is it considered one acupuncture

1 R. Harvey, D.C.

2 treatment?

3 A I believe he bills it as one
4 treatment.

5 Q Dr. Harvey, if you could turn to
6 the third-to-last page, which is the
7 9/19/13 progress note, could you tell me
8 what's written right above the treatment plan.

9 A I don't see 9/13.

10 Q No, 9/19/13.

11 A Yes.

12 Q Could you tell me what's written
13 on that progress note above "Treatment plan."

14 A "No low back pain."

15 Q And next to that?

16 A "Since last treatment," it looks
17 like.

18 Q Do you know if acupuncture was
19 given to Mr. Herrera on his lower back on
20 9/19/2013?

21 A No, I don't know.

22 Q Do you see, on the 9/19 progress
23 note, there's an indication of a treatment
24 site?

25 A Yes.

1 R. Harvey, D.C.

2 Q Do you see "Lower back" circled?

3 A No.

4 Q I don't know if you're looking
5 at the same one I am.

6 A It appears to be circled.

7 Q Do you know if acupuncture was
8 performed on Mr. Herrera's lower back on 9/19?

9 A Based on these points, I
10 don't -- UB --

11 Q Well, Doctor --

12 A It was done on the bladder
13 point.

14 Q In terms of the treatment site,
15 what's indicated as the treatment site on the
16 progress note?

17 A "Lower back" is circled.

18 Q So is it your belief, based on
19 this progress note, that acupuncture is
20 performed on the lower back?

21 A On that site, yes.

22 Q And would it be common for
23 acupuncture to be performed, even though the
24 patient indicated that there was no lower back
25 pain since the last treatment?

1 R. Harvey, D.C.

2 A Yes.

3 Q And why is that?

4 A The pain is just one factor that
5 he goes by. Just because there's no pain
6 doesn't mean there's not a problem with the
7 area.

8 Q Is it fair to say, based upon
9 this progress note on September 19th, 2013,
10 Mr. Herrera told Mr. Brual that he had no
11 lower back pain since his last treatment?

12 A Mr. Hwangbo.

13 Q Sorry, Mr. Hwangbo.

14 A Based upon the record, that's
15 what he told him.

16 Q And his last treatment before
17 September 19th for acupuncture was when?

18 A It looks like 9/12, I believe.

19 Q Dr. Harvey, it's correct that
20 you treat Mr. Herrera for back injuries? You
21 performed chiropractic treatments on him; is
22 that correct?

23 A Yes.

24 MR. MARVIN: Can you mark
25 this, please.

1 R. Harvey, D.C.

2 (Exhibit X-Daily

3 Chiropractic Progress Notes, was
4 marked for identification as of
5 this date.)

6 Q Do you recall if you treated
7 Mr. Herrera on September 19th, 2013?

8 A I would have to check the
9 record.

10 Q We have marked as Exhibit X,
11 daily chiropractic progress notes for
12 Mr. Herrera.

13 A I saw him on 9/19/13, yes.

14 Q When you saw him on 9/19/2013,
15 did he indicate to you if he was having lower
16 back pain?

17 A Yes.

18 Q And what was the level of pain
19 he indicated?

20 A A six.

21 Q Which on a scale of one to ten,
22 how was that described verbally?

23 A Distressing.

24 Q And do you recall having that
25 conversation with him?

1 R. Harvey, D.C.

2 A Yes.

3 Q Did you treat him
4 chiropractically before or after he had
5 acupuncture treatments from Mr. Hwangbo?

6 A I don't recall.

7 Q Did you speak with Mr. Hwangbo
8 about the progress of Mr. Herrera? Have you
9 ever spoken to Mr. Hwangbo in terms of how
10 he's handling treatment?

11 A No.

12 Q Did you ever review the
13 acupuncture notes for Mr. Herrera during the
14 course of your treatment of him?

15 A No.

16 Q Did you ever review the physical
17 therapy notes for Mr. Herrera during his
18 treatment?

19 A No.

20 Q With respect to all the
21 claimants which are the subject of today's
22 EUO, did you ever review their progress
23 reports, the acupuncture and/or physical
24 therapy notes, during the course of your
25 treatment?

1 R. Harvey, D.C.

2 A Not that I recall.

3 Q Do you recall if you ever spoke
4 with Mr. Hwangbo about any of the claimants
5 which received acupuncture about their
6 progress?

7 A I can't recall speaking about
8 any specific patients.

9 Q Would that be the same with
10 respect to the physical therapy?

11 A Yes.

12 Q With respect to Mr. Herrera, do
13 the acupuncture and chiropractic treatments
14 work together or in conjunction, in
15 furtherance of his treatment?

16 A The goal is that both treatments
17 are going to help him.

18 Q Now, on September 19th he
19 indicated to the acupuncturist that he had no
20 lower back pain, yet he indicated to you that
21 he had distressing back pain. Do you know why
22 that is?

23 A Well, if he saw Mr. Hwangbo
24 first, possibly something he did aggravated
25 his back, or something I did might have

1 R. Harvey, D.C.

2 aggravated his back.

3 MR. MARVIN: Off the
4 record.

5 (Discussion held off the
6 record.)

7 Q Doctor, would it be fair to say
8 that he would have had to -- if what you're
9 saying is the case, wouldn't he have had to
10 have seen Mr. Hwangbo first, since Mr. Herrera
11 indicated he had no lower back pain since the
12 time of the visit?

13 A Possibly. Again, I don't know
14 who he saw first.

15 Q You indicated that his last
16 acupuncture visit was September 13th; is that
17 correct? Or September 12th, I'm sorry.

18 A It looks like he was treated on
19 October 29th. Treatment number seven.

20 Q When was treatment number four?

21 A On 9/12.

22 Q So would it be fair to say that
23 he indicated to Mr. Hwangbo, on 9/19, that he
24 had no lower back pain since the time of
25 September 12th?

1 R. Harvey, D.C.

2 A On 9/19 the patient told him,
3 from the record, that he was not having low
4 back pain.

5 Q Since when?

6 A The last treatment.

7 Q Which was when?

8 A Before that looks like 9/12.

9 Q Now, between that time of
10 September 12th to the 19th, did you treat
11 Mr. Herrera chiropractically?

12 A Yes.

13 Q On what dates?

14 A I saw him on 9/13, 9/15 and
15 9/18.

16 Q And on those dates, did
17 Mr. Herrera indicate to you that he had back
18 pain?

19 A Yes.

20 Q And what was the level of his
21 back pain?

22 A On 9/13 it was a level seven, on
23 9/15 it was a level seven and 9/18 was a level
24 six.

25 Q And in terms of the description

1 R. Harvey, D.C.

2 of seven, what is it?

3 A "Horrible."

4 Q Now, Dr. Harvey, do you know
5 why, if this patient had what he described as
6 horrible back pain between September 12th and
7 the 19th, that Mr. Hwangbo indicated that this
8 patient told him he had no lower back pain at
9 all since September 12th?

10 A I don't know.

11 Q Do you believe Mr. Hwangbo would
12 have that information?

13 A I can only go on his record. On
14 the record -- he claims on the 19th he wasn't
15 having back pain.

16 Q Are there any other
17 acupuncturists who work for Harvey Family?

18 A Right now the only one that's
19 actively working in my office is Mr. Hwangbo.

20 Q With respect to the claims which
21 are the subject of today's EUO, did any other
22 acupuncturists, other than Mr. Hwangbo,
23 perform services on them?

24 A No.

25 MR. MARVIN: Off the

1 R. Harvey, D.C.

2 record.

3 (Discussion held off the
4 record.)

5 MR. MARVIN: So since we're
6 talking about acupuncture, let's
7 mark as an exhibit the records for
8 Gina Mascia and Paulino Alvarado.

9 (Exhibit Y-Acupuncture
10 notes of Paulino Alvarado, was
11 marked for identification as of
12 this date.)

13 (Exhibit Z-Physical Therapy
14 Notes of Jeanne Poniros, was
15 marked for identification as of
16 this date.)

17 (Mr. Chisari exits the room
18 and Mr. Cox enters the room.)

19 Q Dr. Harvey, we just marked as
20 Exhibit Y the acupuncture notes for Paul
21 Alvarado?

22 A Yes.

23 Q And are those acupuncture notes
24 fair and accurate copies of the notes which
25 are maintained in the course of Harvey

1 R. Harvey, D.C.

2 Family's business and which were provided from
3 your office to Allstate in connection with
4 this EUO?

5 A Yes.

6 Q Could you describe the
7 acupuncture treatment provided to this
8 claimant on the first date of treatment. It
9 looks like June 20th. And in particular, can
10 you describe the written notes on the progress
11 form.

12 A It looks like he had a prior
13 accident six years ago. On the diagnosis, it
14 mentions that the tongue is dark and red. The
15 pulse is wiry, again, I believe.

16 Q Do you have any firsthand
17 knowledge of the acupuncture treatment
18 provided to this claimant?

19 A What do you mean by "firsthand
20 knowledge"?

21 Q Well, obviously you didn't
22 perform the treatment. Were you in the office
23 when it was being performed? In other words,
24 were you there? Did you ever speak with
25 Mr. Hwangbo about this claimant's acupuncture

1 R. Harvey, D.C.

2 treatment?

3 A I was in the office. I don't
4 recall discussing his treatment with him, no.

5 Q Well, when I say "in the
6 office," obviously you were probably in the
7 building. You weren't actually in the
8 treatment room?

9 A No.

10 Q Is that the same with respect to
11 all of claimants which are the subject of this
12 EUO?

13 A Yes.

14 Q So is it fair to say
15 Mr. Hwangbo, the acupuncturist, is the person
16 who would have the most -- or probably the
17 only person that would have knowledge of the
18 actual acupuncture treatment of these
19 claimants?

20 A Yes.

21 Q And with respect to physical
22 therapy which was performed on the claimants
23 which were the subject of this EUO, is it also
24 fair to say that Mr. Brual, the physical
25 therapist who performed the services, is the

1 R. Harvey, D.C.

2 person that would have the most knowledge, if
3 not the only person who would have knowledge
4 of those services?

5 A Yes.

6 Q Dr. Harvey, on the progress note
7 that you were just talking about, are you able
8 to read any of the notes under the "Pain"
9 section or under the "Acupuncture point"
10 section?

11 A The "Acupuncture" section looks
12 like he checked off "U11."

13 Q Do you know what that means?

14 A "U11" would be --

15 MR. MARVIN: The record
16 should reflect Dr. Harvey is,
17 again, referencing his written
18 notes which he wrote in connection
19 with speaking to Mr. Hwangbo.

20 A It's a back point. A point on
21 the back. And for the other, I'm not sure
22 what the other says.

23 Q Now, in terms of the billing for
24 these services, are you aware of why certain
25 billing codes are used in connection with

1 R. Harvey, D.C.

2 certain acupuncture services?

3 A I'm not sure what you mean.

4 Q So on the progress notes there's
5 certain codes used. For example, a 97810.
6 Exactly what procedure is performed in order
7 to bill under that code, or was performed with
8 respect to Paulino Alvarado?

9 A He did needles for 15 minutes,
10 and then he did additional needles for 15
11 minutes.

12 Q And did he also perform trigger
13 points?

14 A Yes.

15 Q And on what part of the body did
16 he perform the trigger points?

17 A I don't know the part.

18 Q With respect to the all of the
19 acupuncture notes reflecting services
20 purportedly performed on claimants which are
21 the subject of today's EUO for which trigger
22 points were billed, is it fair to say you
23 don't know the parts of the body on which
24 those services were performed?

25 A Correct.

1 R. Harvey, D.C.

2 Q And again, is it also fair to
3 say that Mr. Hwangbo would have the knowledge,
4 or the best knowledge to handle that?

5 A He worked on the point, so he
6 knows the points he worked on.

7 Q Are you aware if anyone else
8 would know those points? Generally are there
9 other people in the room with him?

10 A It's just him and the patient.

11 Q So let's move on to what's been
12 marked as Exhibit Z, which are the physical
13 therapy notes for the same claimant.

14 MR. MARVIN: Just let the
15 record reflect we marked a
16 different patient as Exhibit Z.

17 Q We might as well talk about
18 those records since they are already been
19 marked. And this is Jeanne Poniros. These
20 are the physical therapy notes, progress
21 notes; is that correct, Dr. Harvey?

22 A Yes.

23 Q Could you explain to me what the
24 marking next to "MMT" is on these progress
25 notes.

1 R. Harvey, D.C.

2 A I'm not sure what that marking
3 is.

4 Q I think earlier you said you
5 don't know what MMT is; is that correct?

6 A Correct.

7 Q And again, would it be Mr. Brual
8 who would have knowledge of those facts?

9 A Yes.

10 Q And this patient, Dr. Harvey,
11 looks like he or she had physical therapy on
12 the shoulders; is that correct?

13 A Correct.

14 Q Is that both shoulders?

15 A It appears to be.

16 Q And again, with the subjective
17 and the objective and the assessment and the
18 plan, there doesn't appear to be an indication
19 as to which shoulder it relates to; is that
20 correct?

21 A Correct.

22 Q So how could we determine the
23 progress -- or if the progress is different as
24 to each shoulder within the physical therapy
25 treatment?

1 R. Harvey, D.C.

2 A Mr. Brual would know.

3 Q And would you give the same
4 answer with respect to all of the other
5 claimants which are the subject of this EUO,
6 for which they received physical therapy on
7 multiple areas of their body but -- and which
8 no such reflection is indicated on the
9 progress notes?

10 A Yes.

11 Q Dr. Harvey, some of these
12 claimants also received medical equipment; is
13 that correct?

14 A Yes.

15 Q And you prescribed that medical
16 equipment?

17 A Yes.

18 Q So let's just talk briefly about
19 that, and I will try to do some general
20 questions so we don't have to go through each
21 claimant individually.

22 A Sure.

23 Q We discussed in your prior
24 testimony that you had a relationship with
25 Clinton Hill Surgical Medical Supplies.

1 R. Harvey, D.C.

2 A Yes.

3 Q And do you still have that same
4 relationship?

5 A Yes, but I think they go by a
6 different name now.

7 Q Is it A & S Surgical Supply?

8 A Yes, I believe so.

9 Q And how did you become aware
10 that Clinton Surgical Supply changed their
11 name to A & S Surgical Supply?

12 A I believe the representative
13 told me.

14 Q Do you remember the
15 representative's name?

16 A His name is Steve.

17 Q And did he explain to you why
18 Clinton Surgical changed its name to A & S
19 Surgical?

20 A No.

21 Q Now, the assignment of benefits
22 forms for durable medical equipment from
23 claimants to A & S Surgical, are those
24 executed in your office?

25 A Yes.

1 R. Harvey, D.C.

2 Q So it's fair to say that A & S
3 Surgical gave you a stock of those, and
4 they're executed in your office?

5 A Yes.

6 Q And what's the procedure
7 pursuant to which patients actually receive
8 the equipment?

9 A Normally I recommend equipment
10 to them. I will let the girls know.

11 Q Sorry, when you say "girls" --

12 A The girls at my front desk, the
13 secretaries. And then the patient will sign
14 for the equipment that they're receiving.

15 Q Do you fill out a prescription
16 for the durable medical equipment?

17 A I usually -- I have a sticky
18 like this (indicating) that I will put on
19 their SOAP note, which when the patient gives
20 it to the girl, the girl will see it and they
21 will know what to give to the patient.

22 MR. MARVIN: Let's mark as
23 Exhibit AA documents which we
24 received from your office in
25 connection with today's EUO.

1 R. Harvey, D.C.

2 (Exhibit AA-Prescription
3 Forms, was marked for
4 identification as of this date.)

5 Q Dr. Harvey, are you familiar
6 with those documents in Exhibit AA?

7 A Yes.

8 Q And what are they?

9 A This is a prescription form that
10 patients in my office will sign when we're
11 giving them supplies.

12 Q And this is actually a stack of
13 forms, it's more than just one?

14 A You have given me a stack of
15 forms, yes.

16 Q And I guess the signature on the
17 bottom, is that a stamp or from a computer?
18 The signature of your name.

19 A That signature, I usually sign
20 them, I believe. I'm not sure.

21 Q Look through the stack and let
22 me know if you recall signing these
23 individually or if they're printed or
24 photocopied or a stamped signature?

25 A It looks like a stamped

1 R. Harvey, D.C.

2 signature.

3 Q Does Harvey Family maintain a
4 signature stamp of your signature?

5 A I believe maybe I signed one and
6 then I made copies of it. I'm looking at
7 this. That's what it possibly looks like.

8 Q So you believe that you signed
9 one at some point, and then photocopies were
10 run off with your signature?

11 A Based on this, yes.

12 Q Were these prescriptions ever
13 actually given to the claimants?

14 A (No verbal response.)

15 Q In other words, if they wanted
16 -- are prescriptions ever given directly to
17 claimants or are they given right to the front
18 desk for the DME to be dispensed?

19 A It's done at the front desk.

20 Q And do you maintain an inventory
21 of the DME?

22 A Yes.

23 Q And when A & S Surgical Supply,
24 I guess, took over for Clinton Surgical
25 Supply, or the name changed, did you ever have

1 R. Harvey, D.C.

2 any discussions with anybody from the company
3 as to why that was done?

4 A No.

5 Q Did you ever think to ask why it
6 was done?

7 A No.

8 Q Do you have any written or other
9 agreements with A & S Surgical Supply
10 regarding the provision of DME, durable
11 medical equipment, through your office?

12 A No.

13 Q Does your office maintain any
14 arm slings or ankle braces or DME, other than
15 that which would be used for the back or the
16 neck?

17 A Yes.

18 Q And is that DME ever prescribed
19 to claimants?

20 A Occasionally.

21 Q Now, we talked about Jeanne
22 Poniros and her physical therapy on her
23 shoulder.

24 A Yes.

25 Q Was she ever prescribed any sort

1 R. Harvey, D.C.
2 of arm sling or other DME for her shoulder?

3 A Not that I recall.

4 Q Do you know why?

5 A Why what?

6 Q Why she wasn't prescribed DME
7 for her shoulder.

8 A No.

9 Q Does Mr. Brual ever prescribe
10 DME through Harvey Family?

11 A He personally doesn't, but there
12 are times if he thinks maybe someone needs
13 something, he will mention it to me and then I
14 will get it for the patient.

15 Q And do you recall if that was
16 the case with Ms. Poniros?

17 A I don't recall if she -- what
18 she received.

19 Q With respect to the claimants
20 which are the subject of today's EUO which
21 received physical therapy on their shoulder,
22 are you aware if any of them received any sort
23 of DME which would help their shoulder injury?

24 A Not that -- not offhand. I
25 don't recall.

1 R. Harvey, D.C.

2 Q Is there anything that would
3 refresh your recollection?

4 A If I saw that someone had got a
5 DME, then it would refresh my recollection.

6 Q Again, would Mr. Brual know if
7 he suggested DME for any particular claimant?

8 A Yes, he would know.

9 Q Does Mr. Hwangbo ever suggest
10 that a claimant received DME?

11 A No.

12 Q Now, Dr. Harvey, Nilda Rivera,
13 one of Harvey Family claimants who has her
14 physical therapy notes in Exhibit V, at times
15 described her shoulder pain as distressing; is
16 that correct?

17 A Yes.

18 Q And are you aware if she was
19 prescribed any DME to help her shoulder during
20 the course of her treatment?

21 A I'm not aware, no.

22 Q Do you ever prescribe TENS or
23 EMS units for the treatment of patients?

24 A I will occasionally prescribe a
25 TENS unit, yes.

1 R. Harvey, D.C.

2 Q Do you keep those on hand at
3 Harvey Family?

4 A Yes.

5 Q And what about shoulder braces,
6 do you keep shoulder braces on hand?

7 A No. If we need a shoulder
8 brace, they will deliver it to us.

9 Q Do you recall that happening
10 with respect to any of the claimants which are
11 the subject of this EUO?

12 A I don't know about these
13 specific claimants. I know we have done it in
14 the past, but I don't know about these
15 specific ones.

16 Q And what's the procedure for the
17 A & S Surgical Supply assignment of benefits
18 form being filled out in your office? And how
19 does that work in terms of being filled out
20 and being provided to A & S Surgical Supply?

21 A We will fill it out, and then
22 they will come and pick it up. I think once a
23 month they will pick up the prescriptions.

24 Q And when you say "they" --

25 A A & S.

1 R. Harvey, D.C.

2 Q Do you know who from --

3 A Steve.

4 Q Do you know his last name?

5 A I don't know.

6 Q Can you describe what he looks
7 like?

8 A He's about six-two, six-three.
9 Caucasian.

10 Q The color of his hair?

11 A Brown.

12 Q Anything else to distinguish
13 him?

14 A No.

15 Q So just to clarify, the
16 procedure is these assignment of benefit forms
17 are signed in your office -- I guess kept to
18 the side -- and once a month Steve comes in
19 and he picks them up, correct?

20 A Approximately.

21 Q Approximately once a month.

22 A Yes.

23 Q And do you ever meet with anyone
24 from A & S to go over the types of medical
25 equipment that they're giving to you in order

1 R. Harvey, D.C.

2 for you to provide to your patients?

3 A Well, occasionally he's given
4 me -- he said to try a different support and I
5 didn't like it, or I liked it and -- those are
6 the only discussions I have ever had.

7 Q Let's talk specifics. The
8 cervical pillows which were prescribed to
9 Gabriel Laborde, according to the prescription
10 in Exhibit AA, do you know the make, model or
11 manufacturer of that cervical pillow?

12 A Offhand I don't know, no.

13 Q And what about the hot/cold pack
14 or the orthopedic lumbar support, do you know
15 the make, model or manufacturer of any of
16 those items?

17 A No.

18 Q Do you know offhand the make,
19 model or manufacturer of any of the DME which
20 you prescribed?

21 A Not offhand, no.

22 Q Do you ever give claimants
23 instructions on how to use the various DME
24 which are given to them from the front desk?

25 A Yes.

1 R. Harvey, D.C.

2 Q And at what point do you do
3 that?

4 A When I recommend it to the
5 patient.

6 Q Do you keep items of the DME in
7 the exam rooms so you can show them how to use
8 it?

9 A I have it stored, and I will
10 give it to them and I will show them how to
11 use it.

12 Q I'm sorry, I thought you said
13 that the procedure was they go to the front
14 desk with the paper and it's given to them by
15 the girls at front desk?

16 A Well, they will have them sign
17 it, but there's times -- if I have to show
18 them -- like a pillow I don't have to show
19 them how to use it. But like we have a
20 cervical pump we use or a lumbar pump, and
21 that I will show to the patient.

22 Q During the last EUO we had
23 discussed the Harvey Family profits, but they
24 hadn't -- the taxes hadn't yet been done for
25 the year. In terms of the profits for 2012,

1 R. Harvey, D.C.

2 what percentage did Mr. Brual receive?

3 A I think things just came
4 through. I don't know the percentage. Well,
5 he's one percent partner. Whatever the
6 agreement says. So my accountant tells me,
7 and then we take it from there.

8 Q Do you recall issuing any
9 profits to Mr. Brual within the last year?

10 A Yes.

11 Q And when was that?

12 A I don't recall.

13 Q How many times?

14 A We just do it once a year.

15 Q And what about Mr. Hwangbo, did
16 you distribute any profits to him?

17 A Yes, once a year.

18 Q Do you recall when it was?

19 A No.

20 Q Do you recall how much
21 Mr. Hwangbo received?

22 A No.

23 Q And with respect to Mr. Brual,
24 you said you believe it's one percent of the
25 profits of Harvey?

1 R. Harvey, D.C.

2 A It's either one or two percent.
3 Whatever the agreement says.

4 Q Do you recall what the total
5 profits of Harvey Family was last year?

6 A No.

7 Q Could you approximate?

8 A I have no idea.

9 Q Let's talk about, again,
10 Mr. Goldsmith and North Yonkers Chiropractic
11 Services, P.C. Did you ever have any
12 discussions with him, with Mr. Goldsmith,
13 regarding him forming that company prior to it
14 being formed?

15 A I'm sure I must have -- I don't
16 remember the exact discussion. I'm sure I
17 must have discussed something, but I don't
18 recall exactly what was discussed.

19 Q And why do you recall you must
20 have discussed something?

21 A Just because we talk about
22 things all the time. Something like this
23 would be important, so I'm sure we would have
24 discussed it.

25 Q Do you know when North Yonkers

1 R. Harvey, D.C.

2 Chiropractic Services was actually formed?

3 A No.

4 Q And earlier you said you don't
5 know when you entered into a lease agreement
6 service with North Yonkers Chiropractic
7 Services, P.C.

8 A No, I don't.

9 Q Could you approximate in a
10 few-month period?

11 A No.

12 Q In a six-month period?

13 A No, I really couldn't.

14 Q And I think I asked you this
15 question in a limited way before. Do you
16 recall any terms whatsoever in the lease
17 agreement between Harvey Family and North
18 Yonkers Chiropractic Services?

19 A No.

20 Q Do you know if Harvey Family
21 receives a set amount each month for the
22 lease, or is the amount different?

23 A No, it's a set amount.

24 Q And you don't know what the
25 amount is?

1 R. Harvey, D.C.

2 A No.

3 Q Since our last EUO -- and I will
4 give you the date when we spoke -- on
5 March 21st, 2013, has Harvey Family hired any
6 new employees?

7 A No.

8 Q Have you fired any employees or
9 has anyone left?

10 A No. I had actually a girl on
11 maternity leave for three months, but that's
12 it.

13 MR. MARVIN: Off the
14 record.

15 (Discussion held off the
16 record.)

17 Q Dr. Harvey, with respect to the
18 physical therapy for the claimants which are
19 the subject of today's EUO, I know for
20 Ms. Martinez you believed it was Dr. Dynoff
21 who prescribed the physical therapy?

22 A Right. Typically -- well, I
23 believe so. It could have been Dr. Kushner.
24 It could have been Dr. Solomon. There's other
25 doctors that my patients see. I'm not a

1 R. Harvey, D.C.

2 hundred percent sure who referred her.

3 Q Are Kushner and Solomon located
4 in your office building?

5 A No.

6 Q Were all of the claimants which
7 are the subject of today's EUO referred for
8 physical therapy by one of those three
9 doctors?

10 A No. There's more than those
11 doctors. Sometimes it's their primary doctor.
12 Sometimes it's another orthopedist or another
13 neurologist. A lot of different physicians
14 refer.

15 Q I'm just going to go back to
16 some of your prior testimony in areas where
17 you indicated that you didn't know the answer
18 to certain questions and to see if you now
19 know the answers. And this in particular
20 we're going to go back to your March 21st,
21 2013 testimony.

22 MR. COX: Before we do
23 that, was Lou here when you asked
24 all those questions?

25 MR. MARVIN: Yes.

1 R. Harvey, D.C.

2 MR. COX: Let me make sure
3 he doesn't want to be in the room.
4 There may be some issues.

5 Let's go off, and let me be
6 back in two minutes.

7 (Brief recess taken.)

8 (Mr. Cox left the room and
9 Mr. Chisari entered the room.)

10 Q So Dr. Harvey, I'm going to
11 repeat some questions that I asked you -- and
12 at the time you indicated that you didn't
13 know -- and see if you now know the answers.

14 With respect to Derrick Norman,
15 a claimant we discussed who had physical
16 therapy services performed, I had asked you if
17 you knew what a McMurray test was, and you
18 indicated it was for knee pain, and then I
19 asked what a Clarke test was, and you
20 indicated you were not familiar with what the
21 Clarke test was. Do you now know what the
22 Clarke test is?

23 A No.

24 Q I had also asked you about the
25 Yerbasin (phonetic) test. Are you familiar

1 R. Harvey, D.C.

2 with that?

3 A Could you spell it.

4 Q Actually, in the transcript it's
5 listed as phonetic, so I can't, so we will
6 move on.

7 I asked about the speed test.

8 A No.

9 Q Not familiar?

10 A No.

11 Q The Phalen test, P-H-A-L-E-N?

12 A Phalen is a test on the wrist
13 for carpal tunnel syndrome.

14 Q I had asked you why a Clarke
15 test and a Speed test were performed on
16 Mr. Norman, and you indicated you didn't know.
17 Is that answer still the same?

18 A Yes.

19 Q With respect to acupuncture
20 services, I had asked you about indications of
21 damp accumulation, bi syndrome, qi deficiency
22 and E-U-N, eun, deficiency. And I asked you
23 to explain what those four terms mean, and you
24 indicated you couldn't. I believe you might
25 have explained bi syndrome earlier; is that

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R. Harvey, D.C.

correct?

A I believe so. But the other ones I'm not familiar with.

Q Okay.

I had also asked you, with respect to Mr. Norman, what an acupuncture treatment cycle consisted of, and you indicated you didn't know. Do you now know?

A The only thing I can think of is the recommended course of care.

Q I had also asked about the Ashi, A-S-H-I, acupuncture point, and you indicated you didn't know what that was. Do you now have any knowledge about what that is?

A No.

MR. MARVIN: I have no further questions for today. I will put a statement on the record that with respect to the acupuncture and physical therapy services, again it appears that Dr. Harvey does not have knowledge of those services which are performed on the claimants, which

1 R. Harvey, D.C.

2 are the subject of today's EUO.

3 The responses to many of
4 his questions regarding physical
5 therapy and acupuncture were "I
6 don't know," and he indicated
7 several times that Mr. Brual would
8 have knowledge of those questions
9 with respect to the claimants we
10 talked about with respect to
11 physical therapy, and Mr. Hwangbo
12 with respect to acupuncture.

13 For that reason, Allstate
14 is reserving our right to seek
15 testimony from those individuals
16 in connection with the additional
17 verification of these claims.

18 MR. CHISARI: At this time,
19 Harvey Family Chiropractic,
20 Physical Therapy & Acupuncture
21 PLLC feels it's complied with all
22 requests, and at this point, no
23 further EUOs are required. I have
24 produced a witness over several
25 days, and he has answered all the

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questions put forth.

MR. MARVIN: Thank you,
Dr. Harvey.

(Time noted: 2:26 p.m.)

RICHARD G. HARVEY

Subscribed and sworn to
before me this day
of , 2013.

Notary Public

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Richard G. Harvey	Mr. Marvin	3

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: EUO of Harvey Family Chiropractic

Deposition Date: December 5, 2013

Deponent: Richard G. Harvey, D.C.

Place: 108 New South Road, Hicksville, New York

CORRECTIONS

PG	LN	NOW READS	SHOULD READ	REASON FOR
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Date RICHARD G. HARVEY, D.C.
Subscribed and sworn to before me
this day of 2013.

(NOTARY PUBLIC)

C E R T I F I C A T I O N

I, CHERYL ROBERTSON, a Notary Public in
and for the State of New York, do hereby certify:

THAT the witness whose testimony is
hereinbefore set forth, was duly sworn by me; and

THAT the within transcript is a true
record of the testimony given by said witness.

I further certify that I am not related,
either by blood or marriage, to any of the parties
in this action; and

THAT I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 20th day of December 2013.


Cheryl Robertson

[& - advisement]

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